Supreme Court, U. S.
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PETITION

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1776

DR. ROBIN S. KEY, Stockholder of Penn Central Company,

Petitioner.

v.

PENN CENTRAL CORPORATION, formerly PENN CENTRAL TRANSPORTATION COMPANY, PENN CENTRAL COMPANY and THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT NOS. 78-2347, 78-2348 AND 79-1573.

PETITION FOR A WRIT OF CERTIORARI

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This petition is related to a petition being filed at the same time, *Joseph A. Schafer, et al., v. Penn Central Corporation, etc., et al.*

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Dr. Robin S. Key, a stockholder of Penn Central Company, prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Third Circuit, rendered in these proceedings on January 15, 1979 (8a*), dismissing appeals from the District Court.

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* This refers to page 8 of the appendix to this petition, printed separately. The appendix is also the appendix to the petition of Joseph A. Schafer, *et al.*

Dr. Key also prays that a writ of certiorari issue to review an order of the United States District Court for the Eastern District of Pennsylvania, rendered in these proceedings on February 27, 1979 (4a-5a), which order was appealed to the United States Court of Appeals for the Third Circuit. The appeal was docketed there on May 9, 1979, and is pending.

Incorporation by Reference of Other Petition

Dr. Key hereby incorporates by reference a petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit, being filed at the same time, *Joseph A. Schafer, Whitney W. Irons, Alton P. Gainer, Emil Milan, Carol Kuchar, Leo Sukala, Stephen Sloboda and Charles W. Hannon, Stockholders of Penn Central Company, Petitioners v. Penn Central Corporation, formerly Penn Central Transportation Company, Penn Central Company and The United States of America, Respondents.* The Opinions and Judgments Below, Jurisdiction, Constitutional and Statutory Provisions Involved, Statement of Questions Presented for Review and the Reasons Why the Writ Should Be Allowed, are the same excepting the following additions.

Jurisdiction

This Court should take jurisdiction of an appeal from the order of the District Court, pending in the Court of Appeals, because that appeal involves issues similar to an appeal already decided by that Court on January 11, 1979 (11a-36a). The related petition of Schafer, *et al.* seeks review of that decision. It would be futile to pursue the appeal further in the Court of Appeals and all stockholders' appeals should now be consolidated in this Court.

Statement of the Case

Dr. Key is the owner of approximately 100,000 shares of Penn Central Company. The plan of reorganization of Penn Central Corporation, formerly known as Penn Central Transportation Company ("PCTC" or "the railroad"), was approved on March 17, 1978. Because of the belief of the District Court that stockholders of Penn Central Company ("the holding company") were not entitled to participate in proceedings to reorganize the railroad, Dr. Key never received individual, written notice of the plan of reorganization or of opportunity to be heard and contest it. He did not actually hear about the plan until some time in the spring of 1978, through an item in the Wall Street Journal.

Dr. Key attempted through his stock broker to obtain a copy of the plan. He was successful in doing so some time in July, 1978, and he first consulted a lawyer in Michigan about the plan at 6:00 P.M. on July 19, 1978. His lawyer reviewed the plan and sent an objection to confirmation of the plan to the reorganization Court. It was filed on July 27, 1978, the same date as a hearing on confirmation. Dr. Key was not aware of the hearing, having been given no notice of it.

On August 17, 1978, the railroad reorganization Court confirmed the reorganization plan. The Court discussed the objections of stockholders headed by Joseph A. Schafer, but omitted mention of the objection of Dr. Key.

Dr. Key filed a timely appeal from the order confirming the plan of reorganization of the railroad and from the order providing for its consummation. On October 16, 1978, Dr. Key filed an adversary complaint in the holding company Chapter XI case, seeking to set aside all the actions of the holding company which had been carried out without the participation of its stockholders.

The complaint alleged that at least several of the directors of the holding company have conflicts with the holding company, including one director who owed debt securities issued by the railroad aggregating $313,000 in principal amount (according to a November 14, 1974, proxy statement).

Dr. Key sought answers to interrogatories concerning adverse interests that the directors, elected in 1974, might have with the holding company. Dr. Key also sought to take the depositions of all directors.

On November 22, 1978, Dr. Key moved that the holding company case proceed under Chapter X rather than Chapter XI of the Bankruptcy Act.

On December 12, 1978, the holding company bankruptcy judge entered an order granting a holding company motion to dismiss Dr. Key's complaint and denying Dr. Key's motion that the case proceed under Chapter X, rather than Chapter XI, with opinion (37a-39a). The bankruptcy judge said (38a):

> "Some months ago the attorney representing the instant plaintiff filed a similar complaint on behalf of Joseph A. Schafer, *et al.* (hereinafter referred to as 'the Schafer Group') and, as in the case at bar, the present defendant filed a motion to dismiss which, after hearing, we granted. On appeal, Chief Judge Joseph S. Lord, III, affirmed, and an appeal is presently pending before the Court of Appeals for the Third Circuit. The complaint *sub judice* raises no additional facts or issues of law than those posed by the Schafer Group. Accordingly, for the same reasons that we sustained the defendant's motion to dismiss in that case, we will sustain the defendant's motion to dismiss in the case at bar."

Dr. Key appealed the bankruptcy judge's order to the District Court, which affirmed it on February 27, 1979. Dr. Key filed an appeal to the Court of Appeals.

Additional Reason Why the Writ Should Be Granted

Petitioner, like other stockholders, was denied notice required by the due process clause and in his case this resulted in lack of actual notice of the reorganization plan until after the Court had approved it.

Conclusion

For the foregoing reasons, a writ of certiorari should issue to review the orders of the United States Court of Appeals for the Third Circuit and the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

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